

Family Division Records

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22.1 Scope Note

This chapter deals only with the recordkeeping requirements of the Family Division of the Circuit Court in child protective proceedings. Information concerning records used in investigations of suspected abuse or neglect may be found in Sections 2.18–2.20. Information concerning discovery of various types of records in child protective proceedings may be found in Section 9.3.

22.2 Records of Family Division

Under MCL 712A.28(2); MSA 27.3178(598.28)(2), and MCR 5.925(D)(1), the general rule is that all records of the “juvenile court,” other than confidential files, are open to the general public when the proceedings are open to the public. All records and files created before June 1, 1988, are confidential. MCL 712A.28(1); MSA 27.3178(598.28)(1).

MCR 5.903(A)(9) defines “records” as the pleadings, motions, authorized petitions, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, and court orders. See also AO 1985-5, as amended by AO 1988-3, Part II, 430 Mich xcix (1988) (contents and purposes of “juvenile court” case records).

Under MCL 600.1007; MSA 27A.1007, the county clerk is the clerk of the court for the Family Division and keeps the records and indexes of actions. See MCR 8.105 (general duties of clerks).

22.3 Confidential Files

MCR 5.903(A)(18) defines “confidential files” as all materials made confidential by statute or court rule, including but not limited to:

*See Section 22.7, below.

F the testimony taken during a closed proceeding pursuant to MCR 5.925(A)(2) and MCL 712A.17; MSA 27.3178(598.17); *

*See Section 13.16(A).

F the dispositional reports pursuant to MCR 5.973(A)(4)(c);* and

F court materials or records that the court has determined to be confidential.

Petitions that the court has not authorized for filing do not fall within the definition of “records” in MCR 5.903(A)(9) and are therefore “confidential files.”

22.4 Access to Confidential Files by Persons With Legitimate Interest

MCR 5.925(D)(2) states that confidential files shall only be made accessible to persons found by the court to have a legitimate interest. In determining whether a person has a legitimate interest, the court must consider:

F the nature of the proceedings;

F the welfare and safety of the public; and

F the interests of the juvenile.

*See Benchnote 8 for a discussion of Foster Care Review Boards.

“Person with a legitimate interest” includes a member of a Foster Care Review Board. MCL 712A.28(4); MSA 27.3178(598.28)(4).*

Court records and confidential files are not subject to requests under the Freedom of Information Act, as the judicial branch of government is specifically exempted from that act. MCL 15.232(b)(v); MSA 4.1801(2)(b)(v).

22.5 Records of Proceedings in Family Division

MCR 5.925(B) requires that a record of all proceedings on the formal calendar be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. “Formal calendar” means the judicial phases other than a preliminary inquiry or a preliminary hearing. MCR 5.903(A)(6).

*See Form JC 09.

Records of preliminary inquiries and preliminary hearings may be made and preserved by a written memorandum executed by the judge or referee setting forth findings and procedures followed. MCR 5.925(B).*

If a record of a hearing is made by a recording device, transcription of the hearing is unnecessary unless there is a request by an interested party. The

recording remains a permanent record of the court. MCL 712A.17a; MSA 27.3178(598.17a).

Note: Although proceedings on the formal calendar do not include preliminary hearings, most courts do make recordings of their preliminary hearings. Also, MCR 5.965(C)(3) requires the court to make a written statement of findings or place them on the record if placement is ordered following a preliminary hearing.

22.6 Requirements for Film or Electronic Media Coverage of Court Proceedings

By AO 1989-1, 432 Mich cxii (1989), the Michigan Supreme Court ruled that film or electronic media coverage is permitted in all Michigan courts. All requests for film or electronic media coverage must be allowed if the requests are made at least three business days before the beginning of the proceeding to be filmed. *Id.*, at Part 2(a).*

*See Form
MC 27.

The Administrative Order does provide the court with some discretion, however. A judge may terminate, suspend, limit, or exclude film or electronic media coverage at any time upon a finding that the fair administration of justice requires such action, or that rules established under the administrative order or additional rules imposed by the judge have been violated. This decision is not appealable. Also, the judge has sole discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses. *Id.*, at Part 2(b). The judge may bar coverage of jurors and jury selection, and may require members of the media to make pooling arrangements on their own and, in the absence of such arrangements, to bar media coverage.

22.7 Requirements for Closing Child Protective Proceedings to the Public

MCR 5.925(A)(1) provides that, as a general rule, all proceedings on the formal calendar and all preliminary hearings shall be open to the public. However, MCL 712A.17(7); MSA 27.3178(598.17)(7), and MCR 5.925(A)(2) allow the court to close protective proceedings to the general public under limited circumstances. The court, on motion of a party or a victim, may close proceedings to the general public during the testimony of a child witness or a victim to protect the welfare of the child witness or victim.* In making such a decision, the court must consider:

*See Form
JC 41.

- F the age of the child witness or the victim;
- F the nature of the proceedings; and

F the desire of the child witness or his or her family or guardian or the desire of the victim to have the testimony taken in a room closed to the public.

A petitioner, child, respondent-parent, or other parent or guardian may move to close the proceedings. MCR 5.903(A)(13)(b). A “parent” means a person who is legally responsible for the control and care of the child, including a mother, father, guardian, or custodian, other than a custodian of a state facility, a guardian ad litem, or a court-ordered custodian. MCR 5.903(A)(12).

When a court has ordered, or has pending before it a request to order, a limitation on the access of the public to court proceedings or records of those proceedings that are otherwise public, any person may file a motion to set aside the order or an objection to entry of the proposed order. If the court denies a motion to set aside the order or enters an order after objection is filed, the moving or objecting party may file an application for leave to appeal in the same manner as a party to the action. MCR 8.116(D).

22.8 Access to Records of Closed Protective Proceedings by Persons With a Legitimate Interest

*See Section 22.4, above (access to confidential files).

If a hearing is closed under MCL 712A.17; MSA 27.3178(598.17), the records of that hearing shall only be open by order of the court to persons having a legitimate interest. MCL 712A.28(2); MSA 27.3178(598.28)(2).*

22.9 Expungement of Family Division Records and Files

MCR 5.925(E)(1)(a) defines “expunge” as “to obliterate or destroy.” The court may at any time for good cause expunge its own files and records pertaining to an offense against a minor. MCR 5.925(E)(2)(a).

The court must expunge child protective proceeding files and records pertaining to the minor 25 years after the jurisdiction over the last child in the family ends. MCR 5.925(E)(2)(c).